

# EXHIBIT 7

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COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, FEBRUARY 1, 2008

2008 FEB -1 P 1:32

APPLICATION OF

VERIZON VIRGINIA INC.  
AND VERIZON SOUTH INC.

CASE NO. PUC-2007-00008

For a Determination that Retail  
Services are Competitive and  
Deregulating and Detariffing of the Same

ORDER ON RECONSIDERATION

On December 14, 2007, the State Corporation Commission ("Commission") issued an Order on Application ("Order") in this docket. On December 28, 2007, Verizon Virginia Inc. and Verizon South Inc. (collectively, "Verizon" or "Company") filed a Petition for Reconsideration ("Petition"). On January 4, 2008, the Commission issued an Order Granting Reconsideration for the purpose of continuing our jurisdiction over this matter and considering the Petition.

On or before January 11, 2008, the following participants filed comments in opposition to Verizon's Petition: Division of Consumer Counsel, Office of the Attorney General ("Attorney General"); Fairfax County Board of Supervisors; Communications Workers of America; Cox Virginia Telcom, Inc. ("Cox Telcom"); and XO Virginia, LLC, and Cavalier Telephone, LLC. On January 17, 2008, Verizon filed a reply.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Commission's December 14, 2007 Order shall be modified as described herein.

Verizon's Petition sets forth four separate requests, which we consider *seriatim*:

A. Verizon Requests that "Cable Providers That Have Upgraded Their Networks to Provide Digital Broadband Service Should Count as Facilities-based Providers."

For the reasons discussed in our Order<sup>1</sup> and for the additional reasons discussed herein, we deny Verizon's request. We add the following: Verizon Witness Eisenach labeled a cable company that had upgraded its networks but was not offering local telephone service as an "uncommitted entrant."<sup>2</sup> Nevertheless, Verizon wants such a cable company considered as a *facilities-based* provider of local telephone service, asserting that the threat of entry can act as a restraint on Verizon's prices.<sup>3</sup> We need not find that Dr. Eisenach's description of such a cable company is either correct or incorrect as a matter purely of economic theory, because we must apply Virginia law. The Virginia law governing this case allows us to consider economic theory and apply it where appropriate to the facts before us, but the statute is not simply a recitation of a specific economic theory of competition (and economists, like lawyers, often disagree on the correct theory to apply to a given set of facts or the likely outcomes). A consistent principle contained in our Order was that Va. Code § 56-235.5(F) ("Subsection F") requires this Commission to consider the actual options for local telephone service that are available to consumers when making a finding of competitiveness. We found that the "potential for competition" standard in Subsection F meant that other providers such as cable, competitive

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<sup>1</sup> See Order at 19 ("We find, however, that the capital and human resources investments necessary for a cable company to offer local telephone service are *significant barriers to entry under Subsection F* ....") (emphasis added); Order at 36 ("... we do require in our competitiveness test that at least two competitors already are substantially present in the telephone exchange area *offering residential telephone service*. We find that the statute does not allow us to include in our competitiveness determination *the mere threat* that a cable company ... not already present in an exchange will decide to make the substantial capital investment necessary to enter a market simply in response to price increases for [Basic Local Exchange Telephone Services ('BLETS')] by Verizon.") (emphases added).

<sup>2</sup> Verizon's January 17, 2008 Reply at 3.

<sup>3</sup> *Id.* at 3-4.

local exchange carrier ("CLEC"), or wireless did not have to offer the same array of local telephone services at approximately the same price as Verizon to be considered as competitors to Verizon, but that to be considered a competitor or potential competitor to Verizon, a provider at least had to offer local telephone service in some package and at some price. A cable company that does not offer *any* local telephone service, by definition, cannot be an option "reasonably meeting the needs of consumers" as required by Subsection F.

Further, Verizon asks us to consider such a cable company as a *facilities-based* provider under our market competitiveness test. Such a request misunderstands the purpose of the facilities-based provider in our competitiveness test. The purpose of this prong of our competitiveness test is to ensure that *at least one* competitor to Verizon with significant presence in the exchange is *both* a close substitute to Verizon's landline service in terms of service quality and 911 reliability (thereby meeting our statutory obligation under Subsection F to consider "the presence of other providers reasonably meeting the needs of consumers") *and* has sufficient control over its own wireline network facilities so that it can aggressively compete with Verizon for local telephone service (thereby meeting our statutory obligation under Subsection F to determine when competition or potential competition "can be an effective regulator of the price" of local telephone services). Obviously, a cable company that does not even offer local telephone service cannot fulfill the first key purpose of the facilities-based competitor.

Verizon says that "where cable companies have upgraded their networks to digital broadband service, it is only a matter of time before they offer cable telephony."<sup>4</sup> We need not dispute this statement, because assuming it is true, then our competitiveness test is already applicable to this eventuality. Just as soon as a cable company begins offering local telephone

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<sup>4</sup> *Id.* at 2-3.

service, it will automatically be considered a facilities-based competitor under our competitiveness test.

**B. Verizon Requests that "UNE-Loop CLECs Are Facilities-Based Providers."**

We recognized in our Order that CLECs were a close substitute for Verizon's local telephone service because CLECs "represent a type of local telephone service closely comparable in price, service quality and reliability to that offered by Verizon's traditional landline network."<sup>5</sup> Nevertheless, we did not include in our residential or business competitiveness tests as facilities-based competitors to Verizon those CLECs that were either resellers of Verizon's products and services, that were customers of Verizon's "Wholesale Advantage" leasing program, or that were dependent on Verizon for leasing UNE-L (loop) facilities from Verizon. With regard to CLECs that leased UNE-P (platform) facilities from Verizon, we explained that the Federal Communications Commission's ("FCC") 2005 action reducing Verizon's obligation to lease such facilities to CLECs at total element long run incremental cost ("TELRIC") prices had adversely affected those CLECs' ability to compete aggressively with incumbent local exchange carriers ("ILECs") such as Verizon.<sup>6</sup> We regarded CLECs that lease UNE-loops from Verizon to be potentially vulnerable to similar FCC action; however, we take judicial notice that the FCC recently denied a forbearance petition in which Verizon sought to be freed from its obligation to lease UNE-loops at TELRIC prices to CLECs

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<sup>5</sup> Order at 17.

<sup>6</sup> *Id.* at 16-17 (citing, *inter alia*, NRRI Report, Exh. 271 at 48, n.141; *In the Matter of Unbundled Access to Network Elements; Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, FCC 04-290 (Released Feb. 4, 2005)).

in several markets, including Virginia Beach.<sup>7</sup> The FCC's denial of Verizon's forbearance request is consistent with Verizon's representation in its Petition that

[f]ederal law requires Verizon to lease the last mile UNE-loop facility to [CLECs that lease UNE-loops] at federally mandated rates under the Telecommunications Act of 1996 and the FCC's unbundling rules, which puts the loops under the effective control of the CLEC... Furthermore, with the recent FCC decision in the Verizon forbearance case that Verizon must continue to provide UNE-loops in the Virginia Beach area, the likelihood that Verizon will be relieved from providing UNE-loops at TELRIC rates *in any part of the state appears slim*.<sup>8</sup>

Interestingly, in Verizon's Reply Comments, it acknowledges that it is appealing the FCC's denial of its forbearance petition,<sup>9</sup> so Verizon, in effect, seems to be saying "trust us to fail" in our continuing efforts to be relieved of our obligation to lease UNE-loops at TELRIC prices to competitors.

Nevertheless, Verizon is correct that it continues to have the legal obligation to lease UNE-loops at TELRIC prices throughout its Virginia service territory given the FCC's recent denial of its forbearance petition. Verizon is also correct that should it some day achieve forbearance in Virginia Beach or elsewhere in Virginia, our continuing duty under Va. Code § 56-235.5(G) to monitor prior determinations of competitiveness can take such changed circumstances into account and competitors previously deemed to be facilities-based can be reclassified.<sup>10</sup>

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<sup>7</sup> *In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, Memorandum Opinion and Order, WC Docket No. 06-172, FCC 07-172 (Adopted Dec. 5, 2007; Released Dec. 5, 2007).

<sup>8</sup> Petition at 3-4 (emphasis added).

<sup>9</sup> Verizon's January 17, 2008 Reply at 7 n.19.

<sup>10</sup> *Id.* at 6-7.

Accordingly, upon reconsideration we grant Verizon's request that CLECs which lease UNE-loops from Verizon be considered as facilities-based competitors to Verizon for purposes of the residential and business market competitiveness tests in our Order.

Verizon has not requested, and we make no changes to, our determination in the Order that CLECs which are resellers of Verizon's services and products or CLECs which are dependent upon Verizon's "Wholesale Advantage" leasing program, shall not be considered facilities-based competitors in the residential and business competitiveness tests set forth in our Order.

C. Verizon Requests that "Wireless Providers are Facilities-Based."

In both our residential and business competitiveness tests in the Order we require that at least one competitor to Verizon in the telephone exchange area be facilities-based and be available to at least 50% of the households/businesses in the exchange.<sup>11</sup> As discussed above, the purpose of this prong of our competitiveness test is to ensure that *at least one* competitor to Verizon with significant presence in the exchange is *both* a close substitute to Verizon's landline service in terms of service quality and 911 reliability (thereby meeting our statutory obligation under Subsection F to consider "the presence of other providers reasonably meeting the needs of consumers") *and* has sufficient control over its own wireline network facilities so that it can aggressively compete with Verizon for local telephone service (thereby meeting our statutory obligation under Subsection F to determine when competition or potential competition "can be an effective regulator of the price" of local telephone services).

As we pointed out in our Order, a cable company that offers local telephone service exemplifies our definition of facilities-based provider because it offers both a close substitute in

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<sup>11</sup> Order at 33, 42.

terms of service quality to Verizon's landline service *and* it owns its own landline network and thus is not dependent on Verizon for lease-access to major elements of Verizon's network facilities.

As we also explained in our Order, CLECs generally provide a close substitute to Verizon's landline service in terms of service quality, but the ability of CLECs which lease UNE-P from Verizon to provide aggressive competition to Verizon was negatively affected by the FCC's 2005 decision to reduce ILEC's UNE-P leasing obligations. Consequently, we did not include such CLECs in our competitiveness test as facilities-based competitors (although we did include them as non-facilities-based competitors).

Wireless providers are the reverse side of the coin from CLECs who lease UNE-P from Verizon. Even assuming that a wireless competitor such as AT&T or Sprint Nextel owns its own network facilities, we found in our Order that wireless service at this time does not provide the same consistent level of service quality and 911 reliability as Verizon's landline service for us to fulfill Subsection F's mandate to consider other providers "reasonably meeting the needs of consumers"<sup>12</sup> in determining competitiveness. Verizon implicitly acknowledges the gap in service quality and 911 reliability in its Petition.<sup>13</sup> Accordingly, we excluded wireless providers from the definition of facilities-based competitors in our Order. We did, of course, find that wireless, while not a perfect substitute for Verizon's landline service, could still act as a price regulator under Subsection F and we did include wireless providers as non-facilities-based competitors.<sup>14</sup>

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<sup>12</sup> See *id.* at 21-22, 34-35.

<sup>13</sup> Petition at 6 ("The wireless industry, however, is rapidly addressing both of these issues" (referring to service reliability and 911 service).).

<sup>14</sup> Order at 22, 35.



We agree with Verizon that technological improvements to wireless service will, in all likelihood, continue to close the current gap in service quality and 911 reliability between landline and wireless service. As technological improvements continue to be made, the time may well come when there will be no material distinction between landline and wireless telephone service in terms of 911 service or general reliability. At the present time, however, the record in front of us demonstrates that there remains a material gap in service quality and 911 dependability between landline and wireless telephone service that we cannot ignore. In accordance with the statute, we therefore deny Verizon's request to consider wireless providers as facilities-based competitors, although they will be included in our competitiveness test as non-facilities-based competitors.

D. Verizon Requests that "The Threshold for Including Over-the-Top VoIP Providers as Competitors Should Be Based On Availability, Not Subscribership" of Broadband.

Verizon asks us to count over-the-top Voice over Internet Protocol ("VoIP") providers as competitors to Verizon wherever broadband is *available* to 75% of the households or businesses in a telephone exchange area.<sup>15</sup> The practical result of granting Verizon's request would be to count over-the-top VoIP as a competitor to Verizon anywhere in Verizon's service territory in Virginia where Verizon itself offered either DSL or FIOS (its fiber-based platform), and anywhere in Virginia where a cable company offered cable modem broadband service, even when a cable company was not offering local telephony itself.

Such a result would overstate the actual degree of competition that over-the-top VoIP providers such as Vonage currently pose to Verizon for local telephone service and fatally undermine a key purpose of our competitiveness test, which is to deter the exercise of market

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<sup>15</sup> Petition at 12.

power by Verizon in exchanges determined to be competitive.<sup>16</sup> We discussed in our Order that the record evidence in this proceeding demonstrated that the market share of over-the-top VoIP providers in Virginia was so small that such providers could not be considered serious competitors to Verizon in Virginia at this time.<sup>17</sup> Looking toward the future and recognizing the potential for growth in competition from this service, in our Order we did include over-the-top VoIP as a competitor in any exchange in which Verizon can provide evidence that broadband subscribership has reached 75% in the exchange. The market share of over-the-top VoIP providers in Virginia is currently so insignificant, however, that we cannot accept Verizon's request as it has been submitted in its Petition.<sup>18</sup>

Verizon's request presumes that Virginians who simply want local telephone service at a price they can afford should be forced to undergo the monthly expense of purchasing a broadband internet subscription – a *non*-telephone service that they may not want – in order to obtain local telephone service. Moreover, in some areas of Virginia the only choice consumers will have to purchase a broadband connection will be from Verizon itself, if Verizon's DSL service is their only broadband option. Granting Verizon's request would not only undermine the efficacy of our competitiveness test at deterring Verizon from exercising market power, but it would also gut an important criterion of our competitiveness test, which requires that for a provider to be considered a competitive option to Verizon, the consumer must be able to purchase local telephone service from that provider without being forced also to purchase a non-

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<sup>16</sup> See Order at 37 ("[W]e find that the competitiveness test described herein is sufficient to protect consumers in an exchange area from the exercise of market power by Verizon for BLETs. ... We believe that this market test will deter the exercise of market power in exchanges declared competitive.").

<sup>17</sup> See *id.* at 23-24.

<sup>18</sup> For example, Cox Telcom notes that "Verizon's own data shows that less than 4% of the survey respondents subscribed to any VoIP service." Cox Telcom's January 11, 2008 Comments at 6 (citations omitted).

telecommunications service such as video or internet service.<sup>19</sup> This criterion is based on the statutory mandate in Subsection F to consider "the presence of other providers reasonably meeting the needs of consumers." Further, as the Attorney General stated, "the cost of the broadband connection plus the subscription cost to over-the-top VoIP would be substantially more expensive than wireline service, and thus would not be an effective regulator of Verizon's price of wireline."<sup>20</sup> As discussed above and in our Order, while we do not require that another telephone service provider offer local telephone service at roughly the same price as Verizon to be considered a competitor, we do require that a consumer have the option to purchase local telephone services from that provider without being required also to purchase non-telephone services such as video or internet subscription in order to include that provider in our competitiveness test.<sup>21</sup> The rationale for that requirement was precisely as stated by the Attorney General, *i.e.*, that if a consumer was forced to purchase non-telephone services in addition to the cost of telephone, that provider could not act as a price regulator of Verizon's landline telephone service, as required by the statute.

On the other hand, we agree with Verizon that over-the-top VoIP should factor into our competitiveness test in some fashion, certainly to take into account future growth in competition from it. The difficulty with measuring over-the-top VoIP as a competitor to Verizon at this point in time is that we appear to be faced with two extreme options: either count over-the-top VoIP wherever broadband is simply available, as Verizon requests, or count it not at all. Neither extreme accurately reflects the state of the market in Virginia. Verizon's option would grossly

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<sup>19</sup> Order at 33, 42.

<sup>20</sup> Attorney General's January 11, 2008 Comments at 9.

<sup>21</sup> Order at 33, 42.

overstate the actual amount of competition that over-the-top VoIP presently represents to Verizon (certainly for residential service, as discussed below); not counting it at all would understate it and ignore the fact that over-the-top VoIP could develop as a more substantial competitor to Verizon in the future.

Both the Attorney General and Cox Telcom offer proposals that could represent a middle ground between the "all or nothing" options. Both agree with Verizon that the FCC does not keep data on broadband subscribership by local telephone exchange but does keep broadband subscribership data on a statewide basis.<sup>22</sup> The Attorney General and Cox Telcom propose that over-the-top VoIP could thus be considered as a competitor in a local telephone exchange when the FCC-calculated statewide broadband penetration rate reaches a threshold percentage and the broadband availability in a given exchange reaches a threshold percentage.<sup>23</sup>

We believe that the Attorney General's and Cox Telcom's proposals contain merit as a starting point for finding a method of measuring competition to Verizon from over-the-top VoIP that is more accurate than either of the "all or nothing" options. Verizon dismisses these proposals by stating that it "begs the question of why statewide data would be sufficient for this indicator of competition, but not others."<sup>24</sup> The answer is that it depends on how the FCC data is used. We do not find that the FCC data, alone, should be used to find either statewide or local competition to Verizon from over-the-top VoIP.

We do find, however, that the FCC data can reasonably be used in combination with other available data to produce a practical and usable rough indicator of actual broadband

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<sup>22</sup> Petition at 11; Attorney General's January 11, 2008 Comments at 9; Cox Telcom's January 11, 2008 Comments at 6-7.

<sup>23</sup> Attorney General's January 11, 2008 Comments at 9; Cox Telcom's January 11, 2008 Comments at 7.

<sup>24</sup> Verizon's January 17, 2008 Reply at 11.

penetration (subscriberhip) in Virginia. This information can then logically be used as a prerequisite to finding that competition from over-the-top VoIP exists in certain local telephone exchanges based on availability of broadband, as requested by Verizon. Verizon argues that over-the-top VoIP should be counted as a competitor in any exchange in which broadband *availability* has reached 75% of households or businesses.<sup>25</sup> Yet granting Verizon's request would grossly overstate the actual amount of competition posed to Verizon from over-the-top VoIP for residential service. If, however, the latest available FCC broadband subscribership data and data on Virginia households are first used in combination as a prerequisite to determine that broadband subscribership has reached a threshold penetration level statewide, then it would be a far more accurate indicator of actual competition to find over-the-top VoIP to be a competitor in any local exchange in which broadband is available to 75% of the homes. There is a logical nexus between statewide broadband penetration levels, even if roughly determined, and local exchange broadband availability. To reach the former threshold, broadband subscribership must be taking place in local exchanges that have the higher percentages of broadband availability. The statewide broadband penetration could not otherwise be taking place. Requiring evidence of sufficient statewide broadband penetration before using local broadband availability gives us assurance that broadband availability in a local exchange can be a valid proxy for the existence of over-the-top VoIP competition to Verizon robust enough to restrain Verizon's prices, as required by the statute.

Accordingly, we grant Verizon's request that over-the-top VoIP will be considered as a non-facilities based competitor to Verizon for residential services in any local exchange in which broadband is *available* to at least 75% of the households in that exchange, provided that FCC

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<sup>25</sup> Petition at 12.

data shows that broadband *subscribership* in Virginia,<sup>26</sup> compared to total Virginia households, has reached a ratio of 3:4. Specifically, we find that reaching this threshold ratio is evidence of sufficient statewide broadband penetration such that using the 75% broadband *availability* test for residential BLETs (as requested by Verizon) serves as a valid proxy for the existence of over-the-top VoIP competition.<sup>27</sup>

Next, we find that business broadband penetration in Virginia has already reached a sufficient level such that using the 75% broadband *availability* test (as requested by Verizon) serves as a valid proxy for the existence of over-the-top VoIP competition. We conclude that business broadband penetration is far more advanced in Virginia than residential and is sufficient to give us assurance that using Verizon's broadband availability test in individual exchanges for business services will not overstate the potential competition from over-the-top VoIP to Verizon.<sup>28</sup> Thus, we find that Verizon may use its requested 75% *availability* test for business BLETs.

As a result, for purposes of treating over-the-top VoIP as a non-facilities based competitor: (1) for residential BLETs, Verizon can use (a) its requested 75% availability test if the 3:4 ratio set forth herein is met, or (b) the 75% subscribership test set forth in the Order; and

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<sup>26</sup> See High-Speed Services for Internet Access: Status as of December 31, 2006, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, October 2007 ([http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-277784A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-277784A1.pdf)) ("High-Speed Services Report").

<sup>27</sup> The implementation of this test will occur as part of the streamlined administrative process set forth in the Order. For example: (1) Table 13 of the High-Speed Services Report shows Virginia residential broadband subscribership at 1.451 million lines, and (2) federal census data lists 2.905 million households in Virginia (see American Community Survey, Census Bureau Factfinder, 2006 American Community Survey, Data Profile Highlights ([http://factfinder.census.gov/servlet/ACSSAFFacts?\\_event=Search&geo\\_id=&geoContext=&street=&county=&cityTown=&state=04000US51&zip=&lang=en&sse=on&pcxt=fph&pgsl=010](http://factfinder.census.gov/servlet/ACSSAFFacts?_event=Search&geo_id=&geoContext=&street=&county=&cityTown=&state=04000US51&zip=&lang=en&sse=on&pcxt=fph&pgsl=010))). Thus, the ratio of residential broadband subscribership compared to total Virginia households would be about 1:2 (1.451 million : 2.905 million) at the present time.

<sup>28</sup> For example, Table 13 of the High-Speed Services Report shows Virginia business broadband subscribership at 732,003 lines, compared to about 400,000 active business entities currently registered with the Clerk of the Commission.

(2) for business BLETS, Verizon can use (a) its requested 75% availability test, or (b) the 75% subscribership test set forth in the Order. We conclude that such findings satisfy the relevant statutory standards discussed herein and in the Order.

E. Summary

As a practical matter, granting all four of Verizon's requests in full would give Verizon what it requested in its original Application, which is statewide deregulation of essentially all local telephone services. Yet Verizon failed to prove that it faced competition sufficient to restrain prices in all areas of its Virginia service territory. We found in our Order that such competition or the potential for competition did exist in most of the more densely populated urban and suburban areas of Virginia and we granted Verizon deregulation of approximately more than 62% of all residential lines and 57% of business lines, plus statewide deregulation of bundled and some other services. Our Order also found, however, that the evidence demonstrated there were some remaining areas of Virginia, mostly rural areas and in smaller towns and cities, where consumers do not have realistic alternatives to Verizon for reliable local telephone service sufficient to restrain Verizon's ability to raise prices.

Verizon has repeatedly argued that in those areas of Virginia, the threat from "uncommitted entrants," *i.e.*, other providers who do not presently offer local telephone service but theoretically could decide to offer telephone service some day if Verizon raised prices high enough, would restrain Verizon's price increases.<sup>29</sup> We need not agree or disagree with Verizon's argument purely from the standpoint of economic theory, for our duty is to apply Virginia law. We do not find that current Virginia law allows deregulation if the result will be that Verizon receives the legal authority to raise prices for telephone services in local areas

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<sup>29</sup> See, e.g., Verizon's January 17, 2008 Reply at 3; Eisenach, Tr. at 516-17, 1680, 1716.

where it still retains dominant market power (market power it inherited from decades as a state-granted monopoly). For example, as we noted in our original Order, it is unrealistic to expect a cable company to invest millions of dollars to build a network in an area of Virginia where it does not currently provide cable service just to offer local telephone service in response to an increase in Verizon's prices.<sup>30</sup> Further, Virginia law requires us to ensure that deregulation takes place where the facts show that Virginians have realistic options to Verizon's local telephone service, not theoretical options, and that these options "reasonably meet the needs of consumers."

Accordingly, IT IS HEREBY ORDERED THAT:

(1) The December 14, 2007 Order on Application in this docket is modified as set forth herein.

(2) This matter is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

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<sup>30</sup> See Order at 19.